

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FRANK GARAMELLA, etc., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 06 C 5049
	)	
DENNIS J. FITZSIMONS, et al.,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
TRIBUNE COMPANY,	)	
	)	
Nominal Defendant.	)	

MEMORANDUM ORDER

As soon as this Court received the chambers copy of the newly-filed action in this case, it issued a September 21 memorandum that posed a question--as is its threshold obligation--as to the possible absence of subject matter jurisdiction. As the memorandum reflected, the presence or absence of the diversity of citizenship required for federal jurisdiction was dependent on whether the Tribune Company ("Tribune") was properly aligned on the plaintiffs' or defendants' side of the case.

Although this Court certainly makes no claim of prescience, the Sunday, September 24 issue of the Chicago Tribune carried, as the lead article in its Business Section, a story that reported on the Tribune's board of directors meeting held on the selfsame day that the memorandum was issued. According to that article:

Over the next three months, management will evaluate restructuring options and present the board with a recommendation. But a committee of independent directors with its own set of advisers will oversee that effort and ultimately decide what gets done.

That being the case, it appears highly likely that the Tribune itself (as contrasted with the management-affiliated directors who are the targets of this action) should be aligned with the plaintiffs rather than the defendant (see, e.g., 15 Moore's Federal Practice §102.20[6] (3d ed. 2006) and 7C Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d §1822 (2d ed. 1986 and 2006 pocket part) and cases cited in both those treatises),<sup>1</sup> thus destroying the required diversity of citizenship and compelling the dismissal of this action for lack of subject matter jurisdiction.

Accordingly this action is set for an early status hearing at 8:30 a.m. September 28, 2006. If plaintiffs' counsel know the identity of counsel for Tribune or for the defendant directors or both, they are hereby made responsible for notifying those lawyers (who have not yet appeared of record).



---

Milton I. Shadur  
Senior United States District Judge

Date: September 25, 2006

---

<sup>1</sup> After all, the plaintiffs--Tribune minority shareholders--have sought to bring this action on behalf of the corporation--that is what makes the case a derivative suit.